

DOCUMENT RESUME

ED 307 220

SO 020 114

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TITLE Legal Aspects of Oral History Collections. A Report to the Oral History Committee of the Medical Library Association.
PUB DATE Apr 89
NOTE 7p.
PUB TYPE Information Analyses (070)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Archives; Audiotape Recordings; *Contracts; *Copyrights; Interviews; *Laws; *Legal Responsibility; Library Administration; *Library Collections; *Oral History

ABSTRACT

Legal implications of oral history research and collection can be divided into four broad areas of concern, including copyright, restriction of access, libel, and contracts. This document presents highlights from various authorities in each of these areas. Peterson notes that interviewers and interviewees hold the copyright to their own words; a single oral history embodies two copyrights. Archives should seek transfer of copyright to themselves so they are able to bring suit for infringement if another individual or institution uses the words of the interview. Pierce states that the interviewer and narrator should both sign legal releases for interview content and residual property rights. Four areas of archival material may require access restrictions: privacy concerns and business, personal and investigative information. Four basic privacy invasions are identified, noting that privacy is a right of living individuals only. Libel is the written defamation of a person's character or reputation. Since oral histories are taped and/or transcribed, defamation contained therein would be libel. Duckett contends that a curator, the institution, the interviewer, and the narrator can all be held liable for damages in a libel suit. Oral history materials can be covered to a great extent by the same type of contracts which are associated with archival and manuscript material. Unique considerations concerning oral history contracts are discussed. Librarians with oral history collections should make use of competent legal advice. A 9-item bibliography of the cited authorities is included. (GEA)

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LEGAL ASPECTS OF ORAL HISTORY COLLECTIONS

A Report To The Oral History Committee
Of The Medical Library Association

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April 1989

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Legal implications of oral history collection can be divided into four broad areas of concern. These categories include copyright, restriction of access, libel, and contracts. What follows are highlights from various authorities in each of these areas.

Copyright

Peterson (p 88) notes that "Generally, the interviewer and the interviewee each hold the copyright to their own words; a single oral history tape or transcript embodies two copyrights. Of course, if either the interviewer or the interviewee is relating facts or words spoken by others, they cannot copyright that portion of their spoken words. For this reason, when the interviewee is a public figure, most of his words may not be copyrighted." (Emphasis mine.) Wouldn't the MLA President qualify as a public figure?

Peterson further observes (p 88) that "Private organizations can copyright the words of the interviewer if they wish to do so." Further, (p 89), "In most cases the nonfederal interviewee will have copyright in his words and the archives should seek the transfer of his copyright to the archives. Remember that the transfer must be recorded; without recordation, the archives could not bring a suit for infringement if some other institution or organization uses the words of the interview."

The problem of ownership is expressed differently by Romney (p. 45), who says, "The copyright ownership of the tape is jointly in the narrator and the interviewer from the time of its creation." Thus written contracts transferring this ownership are essential. Pierce (p 75) notes that interviewer and narrator should both sign legal releases for both interview content and residual property rights.

Concerning deposit of copies, Pomney says, (p 45), "These provisions suggest that most oral history projects need not make a deposit of all of their works, but must be ready to do so when asked, and prior to bringing a lawsuit."

Despite the above, the whole area of oral history and copyright is murky at best. Case law is sparse. Neuenschwander (1984, pp 162-163) describes a four-part test that oral history interviews should meet in order to distinguish them from ordinary conversation, which apparently cannot be copyrighted. Neuenschwander also notes that no case has yet decided a firm precedent in this area and recommends either an ammendment to the copyright statute or a ruling by the copyright office that oral history materials are indeed subject to copyright. Eustis describes much the same confusion eight years earlier.

Restriction of Access

Peterson (pp 38-60) outlines four areas in archival material that may require access restrictions: privacy concerns and business, personnel and investigative information. While all of these areas can also apply to oral history materials, privacy is probably the one of greatest concern. Peterson (p 40) quotes a legal expert on the four basic privacy invasions: " (1) intrusion upon the individual's seclusion or solitude, or into his private affairs, (2) public disclosure of embarrassing private facts...; (3) publicity that places the individual in a false light in the public eye; and (4) appropriation, for another person's advantage, of the individual's name or likeness." Peterson further observes that privacy is a right of living individuals only. Thus, material in an oral history interview that could be considered an invasion of privacy might also be libelous if distributed or made available to the general public.

Libel

Libel is the written defamation of a person's character or reputation. Since oral history interviews are taped and/or transcribed, any defamation contained therein would be libel (Duckett, p 249). Duckett (p 249) contends that a curator, his institution, the interviewer and narrator can all be held liable for damages in a libel suit. Peterson (p 44) notes that "...a further provision of the law of libel is that a person who passes on a libelous statement, knowing it to be untrue .. is also guilty of libel." However, he offers a caveat (p 44). " The condition of absolute previous knowledge of the untruth of the information... is simply not a usual condition for archivists." I suppose one must tread softly with any oral history materials in which "personalities" are discussed. Perhaps a careful interviewer can anticipate and deflect some problems.

Contracts

Contracts associated with oral history materials would of course be subject to the same potential problems as any other area of human endeavor involving

contractual arrangements. Oral history interview materials can be covered to a great extent by the same type of contracts which are associated with archival and manuscript materials; these would cover copyright, access and so forth.

However, oral history materials have additional unique problems which should be considered when contracts are drawn up. Contractual coverage of residual property rights should probably include audio/video tape and written transcript editing. Ethical as well as legal problems can easily arise from the product of the editing process. Charlton (pp 235-6) contends the institution may need different release forms for the video and audio portions of a videotaped interview; the law is unclear. What about a separate release form for the written transcript of a video/audio interview? All of the copyright problems addressed earlier must be covered contractually to avoid potential legal headaches.

Romney (p 40) further notes that if an interview was conducted by a non-library or association employee, the library should obtain a copy of the contract between the interviewer and the narrator.

Conclusion

None of the problems outlined above are insurmountable. However, I would agree with Pierce (pp 74-5): "Librarians with oral history collections should avail themselves of competent legal advice."

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